

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481-rdd

Adversary Case No. 08-01232

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In the Matter of:

DELPHI CORPORATION,

Debtor.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

September 23, 2008

10:21 AM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

1 HEARING re Notice of Hearing on Application to Employ Moelis &  
2 Company LLC as Co-Investment Banker to the Official Committee  
3 of Unsecured Creditors Nunc Pro Tunc to July 1, 2008.

4  
5 HEARING re Motion for Order Authorizing Amendment to  
6 Arrangement with General Motors Corporation.

7  
8 HEARING re Expedited Motion for Order Under 11 U.S.C. Section  
9 363 for Authority to Modify Benefits Under Hourly and Salaried  
10 Programs and Modify Applicable Union Agreements.

11  
12 HEARING re Expedited Motion for Order Authorizing Debtors to  
13 Implement Amended and Restated Global Settlement Agreement and  
14 Master Restructuring Agreement with General Motors Corporation.

15  
16 HEARING re Supplement to KECP Motion (Docket No. 213).

17  
18 HEARING re Notice of Renewed Motion For An Order Authorizing  
19 The official Committee of Unsecured Creditors To Prosecute The  
20 Debtors' Claims And Defenses Against General Motors Corporation

21  
22 HEARING re Thirty-fifth Omnibus Hearing Agenda.

23  
24 HEARING re Notice of Motion of AMLP and ADAH to Reargue and  
25 Strike.

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1 P R O C E E D I N G S

2 THE COURT: Please be seated. Okay. Good morning,  
3 Delphi Corporation.

4 MR. BUTLER: Good morning, Your Honor. Jack Butler,  
5 Kayalyn Marafioti and Al Hogan here on behalf of the debtors  
6 for their thirty-fifth omnibus hearing agenda which has been  
7 filed with the Court.

8 Your Honor, we have an agreed order for the contested  
9 matters which we will review for you in the first few minutes,  
10 but there are two items to deal with prior to that. First is  
11 item one, an uncontested matter, dealing with the unsecured  
12 creditors' committee application involving their investment  
13 bankers. That was filed at docket number 14126 and Mr. Riela  
14 from the creditors' committee, from Latham, is going to present  
15 that application.

16 THE COURT: Okay.

17 MR. RIELA: Good morning, Your Honor. Michael Riela  
18 from Latham & Watkins on behalf of the creditors' committee.  
19 The committee filed the application on September 3rd to retain  
20 Moelis & Company as the coinvestment banker. There have been  
21 no objections.

22 Prior to filing the motion, I was in contact with the  
23 office of the United States Trustee. The proposed order  
24 contains some revisions that the U.S. Trustee had requested.  
25 And also, per the U.S. Trustee's request, provide for an

1 interim final order dichotomy whereby an interim order would be  
2 entered now and a final order entered later, after notice to  
3 all creditors. And perhaps I'd like to get some guidance from  
4 the Court as to whether you have, given the situation in which  
5 we are now, whether you were doing no soft credit at this  
6 point. It would be feasible, but, obviously, if we decide to  
7 go that route that would be fine with us.

8 THE COURT: All right. And the revisions are to  
9 include the standard language on indemnification and attorneys'  
10 fees related to the indemnification?

11 MR. RIELA: The indemnification language is exactly  
12 the same or very similar to what was approved by this Court  
13 with the Jeffries application. The language that the U.S.  
14 Trustee had asked for was there is a provision in the  
15 engagement letter that provides that Moelis has the opportunity  
16 to seek an increase in the transaction fee cap. And we had  
17 agreed that if Moelis were to seek that modification that this  
18 Court would apply the standards applicable to professional  
19 compensation, a fee enhancement. We had agreed to that, that  
20 was the U.S. Trustee's request.

21 THE COURT: I.e., it's not at 328(a) it's a 330?

22 MR. RIELA: For that fee enhancement request,  
23 correct.

24 THE COURT: All right. Any position by the debtor?

25 MR. BUTLER: Your Honor, the debtors have no



1 objection to the application. Our understanding is that  
2 there's no additional economic burden being placed on the  
3 estates. This is an agreement between the two investment banks  
4 as to how to --

5 THE COURT: It's really kind of a replacement.

6 MR. BUTLER: Correct, Your Honor.

7 THE COURT: Because people moved firms.

8 THE COURT: You're right, Your Honor. And for that  
9 reason the debtors would ask, and hopefully it would be  
10 acceptable to the U.S. Trustee and it's acceptable to the  
11 Court, that the estate not be burdened with the cost -- because  
12 we'll be the ones paying for it -- the cost of noticing out all  
13 creditors seeing as this arrangement's already been, if you  
14 will, approved once.

15 THE COURT: Well, I think the structure of having it  
16 be interim and final is a good one. It can be on the docket,  
17 though, if anyone is interested they'll see it on the ECF  
18 docket and they'll have that extra time to react to it. I  
19 don't think you need to give notice, under these circumstances,  
20 to the whole universe but simply the filing of the order, which  
21 provides for a second chance, if you will, to object on ECF  
22 will be sufficient.

23 MR. RIELA: Thank you, Your Honor. And would the  
24 hearing on the final order be during the November omnibus or  
25 the October, given there's usually a forty-five day window?

1 THE COURT: Well, the October is when?

2 MR. BUTLER: October 23rd, Your Honor.

3 THE COURT: Yes, let's make it the November one.

4 MR. RIELA: Okay. I have a proposed order on disk,  
5 let me hand it up.

6 THE COURT: Why don't you hand that up?

7 MR. RIELA: Thank you, Your Honor.

8 THE COURT: For those of you who are standing, there  
9 is an overflow courtroom, although I imagine you've heard of  
10 that already.

11 (Pause)

12 MR. BUTLER: Your Honor, the other housekeeping  
13 matter that I would mention is that with respect to item number  
14 7 on the agenda, which is the motion of AMLP and ADH, the  
15 Appaloosa entities, to reargue and strike the Court's earlier  
16 ruling in the plan investor litigation; that's in adversary  
17 proceeding number 08-01232 at docket number 95. That matter  
18 has been set by the Court and the parties to be heard in a non  
19 omnibus hearing on October 8, 2008.

20 THE COURT: Right. And that's subject to my  
21 reviewing the responses or objection to the motion. I may,  
22 after reviewing them, inform the parties I don't need a  
23 hearing, but that's a holding date in case I do need a hearing.

24 MR. BUTLER: Thank you, Your Honor. So, Your Honor,  
25 that leaves us, then, with the contested matters on the docket.

1 There are five contested matters.

2 During an earlier meet and confer, the parties agreed  
3 that we would take them in the following order, they're in  
4 the -- on the agenda in the docket order but the order in which  
5 we would propose to present them, with Your Honor's agreement,  
6 would be number 3, the pension modification motion, then moving  
7 to number 4, the GSA and MRA amendment motion, then back to  
8 number 2, the GM arrangement, amendment approval motion on the  
9 liquidity support arrangements. Then number 6, the fifth  
10 supplement of the IAP, which are the four debtor motions, and  
11 then finally number 5, the STN motion brought by the creditors'  
12 committee. So that would be the order we propose to proceed  
13 with.

14 THE COURT: Okay.

15 (Pause)

16 MR. BUTLER: Your Honor, the first matter we're going  
17 to deal with, then, is matter number 3 on the agenda. It's the  
18 hourly and salaried pension program modification motion filed  
19 at docket number 14162.

20 There have been objections filed, two objections  
21 filed, by the creditors' committee at dockets number 14168 and  
22 14205. There were limited objections filed by the IUE-CWA at  
23 docket number 14176 and by the United Steel Workers at docket  
24 number 14216. And there was an undocketed objection of an  
25 individual salaried employee that was also received by the

1 debtors and which we've addressed in the reply.

2 My understanding is that at this hearing that neither  
3 of the unions are going to be prosecuting their objections to  
4 this motion. I just want to confirm that.

5 MR. ROSENBERG: The IUE is very supportive of this  
6 motion. We are not objecting to it.

7 THE COURT: Okay.

8 UNIDENTIFIED ATTORNEY: On behalf of the steel  
9 workers our objections are stated but we anticipate working it  
10 out.

11 THE COURT: Right. But the objection is more, as I  
12 read it, a reservation because you're in the middle of  
13 bargaining on terms?

14 UNIDENTIFIED ATTORNEY: That's exactly right, Your  
15 Honor.

16 THE COURT: Okay.

17 MR. BUTLER: And, Your Honor, it's the debtors' view,  
18 as we've stated both in our original motion and in the reply,  
19 that we would not be able to pull forward the pension freeze  
20 date as it relates, for example, to the United Steel Workers  
21 without an implementation agreement signed by them that has to  
22 be collectively bargained. And, so we understand that and  
23 we've advised counsel of that and I'll state it here again on  
24 the record.

25 THE COURT: Okay.

1 MR. BUTLER: So, Your Honor, that leaves us dealing,  
2 essentially, with the -- in terms of the substantive  
3 objections, with the objections of the creditors' committee.

4 Turning for a moment to the evidentiary record, there  
5 are -- and I'll indicate, Your Honor, that we have conducted a  
6 series of meet and confers over the last ten days involving the  
7 parties; involved all the parties that chose to participate,  
8 other than entities that filed objections for the first time  
9 yesterday. There were no meet and confers after yesterday's  
10 noon filing but as to the others there were, so there certainly  
11 was as to this motion. And we have worked on joint exhibit  
12 indices. I believe there are no objections from any party as  
13 to the exhibits that are coming in. When we get to the GSA  
14 hearing, there are some designations for depositions and there  
15 are some additional exhibits that Wilmington Trust provided us  
16 this morning, which I'll talk about when we get to the GSA and  
17 MRA hearing, which the debtors have no objection to coming in.

18 But in terms of this motion, because while we -- I  
19 should say, Your Honor, we conducted discovery over the last  
20 ten days or so on a consolidated basis but the hearings are  
21 proceeding, obviously, on a motion by motion basis -- separate  
22 contested hearings. And so we'll indicate to the Court the  
23 record that's appropriate and agreed to as to each of those  
24 motions.

25 For purposes of this motion, the hourly and salaried

1 pension program modification motion, there is a joint index  
2 indicating sixty exhibits although there are a series of them  
3 in the index, when you go through, that are actually reserved.  
4 The first three are the declarations of the party witnesses.  
5 The next, 4, 5 and 6, are materials presented to the debtors'  
6 board of directors and compensation committee. Exhibit 7 deals  
7 with a presentation made to the Delphi statutory committees.

8 Then there are some excerpted sections from board of  
9 directors, comp committee and statutory committee presentations  
10 that run from Exhibits 8 through 15. And then there are some  
11 union documents that run from 16 to 30, although I'll note that  
12 numbers 25 through 30 are reserved and we will not be using  
13 them at today's hearing.

14 There are some salary or pension related documents  
15 that are from number 31 to 41. And then the court documents  
16 are from 42 to 51. Exhibit 52 is reserved, it's not going to  
17 be used today. The demonstratives are Exhibit 53.

18 A word on the deposition transcripts: 54, 55, 56 are  
19 all highly confidential; 56 should have been the transcript of  
20 Craig Naylor, not Rodney O'Neal. Mr. Naylor's deposition was  
21 taken in connection with this motion.

22 And then there were additional materials designated  
23 by the IUE-CWA at items 57 through 60 which are agreed to in  
24 terms of admission.

25 So, Your Honor, with that in mind as it relates to

1 this motion, I would move the admission of documents 1 through  
2 60.

3 THE COURT: Any objection to their admission?

4 MR. ROSENBERG: Your Honor, we're having a bit of a  
5 problem here. In terms of the people who are in the courtroom  
6 sitting next to me, the only agreements that we are aware of,  
7 the only agreements we were ever asked to make, were with  
8 respect to the exhibits for the GSA motion. To the extent  
9 these are the same, I guess we have no problem. To the extent  
10 that they are different, I can't say we've agreed, unless  
11 someone on my team corrects me, but no one has. And  
12 furthermore, part of our objection was that we had no financial  
13 information to back up the proposed SERP and SRESP proposal for  
14 the follow-up plan.

15 A whole bunch of material in that regard came in in a  
16 reply that was filed 7 or 8 o'clock last night. To the extent  
17 that any of that is in the exhibit, we certainly have not  
18 agreed to it, nor have we even analyzed it yet. So, again, I'm  
19 sort of speaking in the blind here because all of this is news  
20 to me. We certainly have an agreement on the GSA exhibits.

21 MR. BUTLER: Your Honor, my understanding is we met  
22 and conferred on all the exhibits for all of the contested  
23 hearings today, not just isolated to one of the five hearings,  
24 and there were indices prepared for all of them and reviewed  
25 for all of them and we received no objections. And my

1 understanding -- and I can certainly talk for my team, my  
2 understanding is that there was an understanding as to all  
3 these matters as to what would come in and would not come in.

4 Mr. Rosenberg's statement just now about information  
5 appearing for the first time in a reply is incorrect. The  
6 reply had information that summarized an e-mail sent to  
7 Mr. Rosenberg's firm a number of days ago. And a bunch of  
8 information --

9 THE COURT: But that's not really an admissibility --  
10 the issue before me is whether these documents should be  
11 admitted or not.

12 MR. BUTLER: Your Honor, I move their admission  
13 unless someone has -- I thought we had an agreement. And if we  
14 don't, then I guess we should hear what objections people have.

15 MR. ROSENBERG: We'd like to see them first, Your  
16 Honor.

17 THE COURT: That's --

18 MR. BUTLER: They've been provided. All the exhibits  
19 were provided to the creditors' committee.

20 THE COURT: You should take a look, at least, at the  
21 index. I'm assuming they're right in front of you.

22 MR. ROSENBERG: We can do that, Your Honor. May we  
23 have five minutes to do that?

24 THE COURT: Yes. And while you're doing that, I had  
25 a question that's separate from the exhibits that Mr. Butler,



1 you can address.

2 The confirmation order says in paragraph 18, headed  
3 Freezing of Pension Plan, "notwithstanding anything in the  
4 plan, the pension plan shall be frozen by March 1, 2008 or as  
5 soon as practical thereafter". Upon it's face, that suggests  
6 this should already have been done in March.

7 MR. BUTLER: Right. Your Honor, except that there  
8 is -- that's true, that's what the confirmation order says but  
9 there are collectively bargained agreements which each of the  
10 unions that provides that the freeze date cannot occur until, I  
11 believe, the emergence date in each of the CVAs. And those are  
12 in the labor MOUs. And given the interplay of Section 1113 and  
13 1114 and the CVAs, we believe that we had the responsibility of  
14 collectively bargaining the acceleration of the freeze date.

15 THE COURT: I understand that but you still have that  
16 responsibility, right? I mean, you've committed to the unions  
17 to finish the bargaining.

18 MR. BUTLER: Correct.

19 THE COURT: So my question is as far as the Court's  
20 authority is concerned, what additional authority do you need  
21 on this aspect of the motion, the freezing aspect?

22 MR. BUTLER: Your Honor, our belief was because we  
23 intended to bring, and we've said this in a number of cases,  
24 because there are aspects of the confirmation order that we  
25 think we could rely on, the fact that we were deciding for what

1 we think good business reason to bring forward -- to bifurcate  
2 and bring forward a number of these items in order to preserve  
3 and protect the estates. We believed it was appropriate to  
4 come before the Court.

5 THE COURT: No, I understand that, but this one  
6 doesn't seem to me to be a bring forward. It seems to me I  
7 already granted authority, under the confirmation order, for  
8 this. Not necessarily for the aspects dealing with the  
9 salaried plans because I think those were contingent upon  
10 confirmation.

11 MR. BUTLER: I think all the follow-on plans, Your  
12 Honor --

13 THE COURT: The follow-on plans. But the freezing --

14 MR. BUTLER: The SHRP, the SRP the CIRP, all of them,  
15 all follow-on plans

16 THE COURT: But as far as the freezing is concerned,  
17 it seems to me I've already approved that. Is there some other  
18 issue there?

19 MR. BUTLER: Your Honor, not if Your Honor chooses on  
20 that point to confirm your authority. The problem with the  
21 reports is that the debtors would not freeze these things  
22 without the follow-on plans becoming available.

23 If you remember, the March 1 date -- since Friday was  
24 tied to a January confirmation order and attempt to emerge in  
25 the first quarter of this year and there are notices that had

1 to be given and there was a whole reason for the sequencing of  
2 that and a connection with that order. But you're right, Your  
3 Honor, you have already approved the freeze of the plans. We  
4 believed it to be in the context of the confirmation and the  
5 effectiveness of the plan and we were being very conservative  
6 on how we addressed this. This is obviously a very sensitive  
7 issue to a lot of our stakeholders, as Your Honor can tell.

8 THE COURT: Actually, that raises the other issue I  
9 had on this, which is that the order says they shall be frozen.  
10 It doesn't seem to contain any other conditions to that. The  
11 follow-on plans deal with the assets of the frozen plans. And  
12 I understand that that's a use of estate property and that  
13 requires authority, I believe, but it does seem to me that as a  
14 legal matter, as opposed to a business matter, the follow-on is  
15 not a requirement of freezing. As a business matter you argue  
16 it makes sense.

17 MR. BUTLER: Yes. Well, it certainly is, Your Honor,  
18 to the HRP. It's clear to me that the unions would not agree  
19 to the amendment of the collective bargaining agreements and to  
20 pull forward the freeze date outside of the plan package, which  
21 included the follow-on plan without the follow-on plan being  
22 part and parcel to that. And for the very same reason, the  
23 confirmation report has the same view.

24 THE COURT: As a matter of this hearing, I think it's  
25 probably an academic issue because no one, as far as I can see,

1 is opposing freezing; they're just focusing -- the committee is  
2 just focusing on some aspects of some of the follow-on plans.

3 MR. BUTLER: Right. I think the only aspects they're  
4 focused on are the plans that don't pay anything until we  
5 emerge, and those are the two executive plans.

6 THE COURT: It does seem to me, as far as the relief  
7 that you're seeking, I don't think you need an order for the  
8 freezing part of it, maybe just defining that it's -- that you  
9 already had that authorization.

10 Have you had a chance to look at the exhibit index?

11 MR. ROSENBERG: We have, Your Honor, and we would  
12 object only to 54, 55 and 56, which are three deposition  
13 transcripts. The committee, in connection with this motion,  
14 has not designated anything in those depositions for this Court  
15 and they were depositions taken by the objectors. So we will  
16 discuss this again when we get to the GSA, but for purposes of  
17 this motion, we object to that being part of the record.

18 THE COURT: And the basis?

19 MR. ROSENBERG: The basis is that they were our  
20 depositions and we have not designated any portion of it to be  
21 part of the record.

22 THE COURT: Okay. And there was no agreement at the  
23 beginning that either --

24 MR. ROSENBERG: They are Delphi party witnesses,  
25 Your Honor.

1 MR. BUTLER: Your Honor, could I have one moment?

2 THE COURT: Okay.

3 (Pause)

4 THE COURT: These are depositions of the people who  
5 submitted declarations?

6 MR. BUTLER: They are, Your Honor.

7 THE COURT: All right. So we have the declarations  
8 and we have the cross examination if we want.

9 MR. BUTLER: That's correct, Your Honor. I'm not --  
10 if the creditors' committee wants to persist in their  
11 objection, that's their right.

12 THE COURT: All right.

13 MR. ROSENBERG: We do, Your Honor.

14 THE COURT: I'll admit the exhibits with the  
15 exception of the three declarants' depositions.

16 (Joint Exhibits 1-53 and 57-60 were hereby admitted into  
17 evidence, as of this date.)

18 MR. BUTLER: Right. So that would be, just for the  
19 record, Your Honor, 1 through 60 excluding 54 through 56.

20 THE COURT: Correct.

21 MR. BUTLER: Your Honor, as we customarily do in  
22 these hearings, we will not present any argument until after  
23 the evidentiary record comes in. The first declarant for the  
24 debtors, the first witness, is John D. Sheehan, our chief  
25 restructuring officer, and his declaration is Exhibit 1, which

1 has been admitted subject to cross examination.

2 THE COURT: Okay. Does anyone want to cross examine  
3 Mr. Sheehan? Okay. I've reviewed Mr. Sheehan's declaration  
4 and I don't have any questions of him, so we should move on.

5 MR. BUTLER: Your Honor, the next declaration, the  
6 next witness, is Robert (Steve) Miller, Jr., our chairman of  
7 the company, executive chairman of Delphi Corporation. His  
8 declaration is Exhibit 2 to this hearing. It's been moved and  
9 admitted subject to cross examination.

10 THE COURT: Does anyone want to cross examine  
11 Mr. Miller? No? Okay.

12 (Pause)

13 THE COURT: Again, I've reviewed Mr. Miller's  
14 declaration, and I don't have any questions of him either.

15 MR. BUTLER: Thank you, Your Honor. Finally, Your  
16 Honor, the third witness for the debtors is Craig G. Naylor,  
17 our acting lead independent director and chairman of the  
18 compensation committee. His declaration has been admitted at  
19 Exhibit 3, subject to cross examination.

20 THE COURT: Does anyone wish to cross examine  
21 Mr. Naylor?

22 MR. ROSENBERG: No, Your Honor.

23 THE COURT: All right.

24 (Pause)

25 THE COURT: My questions of Mr. Naylor, I think, are

1 questions that also can go to you, Mr. Butler. So unless  
2 you're not able to answer them, that's your option, then we can  
3 put him on the stand if necessary. I don't think I have  
4 questions that can't be answered by the attorneys. So I don't  
5 need to have him testify live.

6 MR. BUTLER: All right. Your Honor, I believe that  
7 is the evidentiary record in connection with this matter.

8 THE COURT: Okay. All right. So maybe I should hear  
9 from you, Mr. Rosenberg, on the objection.

10 MR. ROSENBERG: I will be very brief, Your Honor. As  
11 Your Honor correctly noted, we are not objecting to the  
12 freezes, nor are we objecting to the carry-on plans for the  
13 hourly workers or the salaried workers except to note that we  
14 may not have the full final terms of the hourly carry-on plan  
15 because it needs to be negotiated and signed off on by the  
16 unions. So it could change considerably. And I would think  
17 that the parties-in-interest and this Court should know what a  
18 final deal looks like before a final sign-off.

19 But our real problem and concern is with the SERP and  
20 SRESP. Again, not the freeze, but rather building in now an  
21 improved carry-on plan which becomes effective upon the  
22 confirmation of a plan. Now the debtor blithely says that it's  
23 the same carryover plan that was provided for under the  
24 confirmed but unconsummated plan, so why do we have a problem?

25 Well, Your Honor, we have a problem because the

1 universe has changed and changed rather dramatically. What was  
2 appropriate then, pursuant to consummation of that plan, is not  
3 necessarily appropriate now pursuant to consummation of a plan  
4 that doesn't even exist yet. That is a plan term to be looked  
5 at and negotiated in connection with a plan, not locked in now  
6 so that again we will be looking at a sub rosa plan, a plan  
7 that will have to contain these terms, regardless of the  
8 economic costs, regardless of the relative costs vis-a-vis  
9 benefits to other parties, regardless of the cost to the  
10 reorganized entity as it comes out and whether or not it can  
11 afford it, whether or not it is properly sized, whether or not  
12 the company looks anything like what it looks like today. It  
13 is simply, one more time, an improper lock in of a plan term,  
14 unnecessarily, potentially prejudicially not only to the  
15 creditors but potentially to the reorganized entity. It should  
16 not be confided; it should come later.

17 THE COURT: Let's deal with the first point  
18 Mr. Rosenberg made, which is the final terms of the replacement  
19 plan, or carry-on plan, for the unions haven't been negotiated  
20 yet.

21 MR. BUTLER: Actually, Your Honor, my understanding,  
22 and I've got Kevin Butler in the courtroom and you can confirm  
23 with him, but my understanding is that the follow-on plan for  
24 the HRP was bargained in 2004. That plan has been up and  
25 running and has already been collectively bargained.



1           What we're collectively bargaining now are  
2           implementation agreements for the freeze and for the 414(1)  
3           pull forward and for the releases and for the cessation date of  
4           OPEB. I don't believe that and Mr. Butler, without disclosing  
5           any of the negotiation, I think can probably confirm. I don't  
6           think that we're negotiating amendments to the 2004 follow-up.

7           MR. K. BUTLER: That's absolutely correct. The 2004  
8           and 2007 confirmed those terms.

9           MR. BUTLER: Those already exist, Your Honor.

10          THE COURT: I guess my concern is that you're asking  
11          me for authority subject to a condition subsequent still,  
12          right? There are still things to be done that you're asking  
13          me, I think, to approve now without knowing what those things  
14          are?

15          MR. BUTLER: Your Honor, this is no different -- I  
16          don't think that's exactly the way I would think about this.  
17          This is no different, I think, than, for example, a number of  
18          the asset sales Your Honor approved where the transactions were  
19          subject to the negotiation of agreements between the company  
20          and the successor/purchaser and the unions, where there were  
21          consents required.

22          There were a number of times with the IUE, for  
23          example, where transactions approved in this court were  
24          approved subject to those continued negotiations and those were  
25          heard. We never brought those back to the Court. There's

1 also, I think, a principle here. I think the Bankruptcy Code,  
2 and we indicated this in our papers, the Bankruptcy Code  
3 authorizes the debtors to negotiate with their unions and  
4 basically to collectively bargain things without, I think, the  
5 expressed approval of the Bankruptcy Court.

6 THE COURT: That's fair. I guess my concern, and I'm  
7 pretty sure it's a hypothetical concern, is if those  
8 negotiations go off on a track that you and I and everyone  
9 else, if you looked at it objectively, would say this is not  
10 anticipated. If, for example, the debtors were so eager to get  
11 this done that they gave away something that would really  
12 appear to be out of the ordinary course and not really properly  
13 the subject of collective bargaining it would seem to me if  
14 that were the case then I should revisit this if that type of  
15 thing happens.

16 MR. BUTLER: Your Honor, you're right. There are  
17 hypotheticals throughout today's hearing that can be  
18 postulated. The requirements of what the unions need to do,  
19 between now and the end of this month, to participate in the  
20 first transfer under 414(1), if that motion is approved by  
21 Your Honor, are quite explicit. And the company, perhaps to  
22 the chagrin of the unions -- I think Mr. Kennedy, among others,  
23 would confirm to the Court that the company has been quite  
24 focused on limiting the negotiations to those subject matters.  
25 And that's part of what we're going to be doing about the next

1 motion because at least one union is unhappy about that.

2 THE COURT: Well, that was one of the things that was  
3 prompting my comment.

4 MR. BUTLER: Right.

5 THE COURT: I think I know what you're alluding to.

6 MR. BUTLER: And, Your Honor, from our perspective I  
7 do think, as it relates to the pension freeze, that Your Honor  
8 can approve this. I don't think it's necessary to have the  
9 implementation agreements. By their nature, the implementation  
10 agreements are designed as being matters that can be approved.  
11 And I'm not a labor lawyer, so I'll probably use the wrong  
12 nomenclature. But the implementation agreements are intended  
13 to be agreements that are not so material that they would  
14 require, for example, ratification by the membership. They are  
15 intended to implement the labor MOUs that have been previously  
16 approved by this Court.

17 THE COURT: All right.

18 MR. BUTLER: And therefore I don't think they arrive  
19 to the level of anything either the code requires or Your  
20 Honor, in his discretion, should require separate  
21 consideration.

22 THE COURT: All right. Well, given the company's  
23 authority under the code, in fact the code's preference for the  
24 company to bargain on its own without Court supervision, I  
25 believe that I can approve the motion insofar as it deals with

1 the plans covering the union employees although the motion  
2 contemplates additional bargaining that still has to occur.

3 However, I would be very quick to issue an order  
4 under Rule 59 or Rule 60 if I was presented with facts that  
5 showed that that bargaining went beyond what I believe is  
6 contemplated by this motion.

7 So let's then turn to the add-on or replacement plan  
8 issue for the SERP and the -- I don't know do you pronounce it  
9 by the letters or by trying to pronounce the whole thing,  
10 SERSP. I'm not -- and Mr. Rosenberg you can respond to this,  
11 I'm not particularly bothered by the notion that the  
12 replacement, or add-on, kicks in on the effective date of a  
13 plan because, as we've just seen, I certainly have authority to  
14 approve it now to kick in. In other words, I don't really see  
15 this as determining the structure of a plan as opposed to  
16 affecting or reflecting a proposal that should be looked at on  
17 its merits. But I am, I guess, concerned about the notion that  
18 it is necessary.

19 As I understand it, unlike the plans that involve  
20 union employees, but you tell me, is there a requirement that  
21 there be a replacement or is this really a business  
22 determination only?

23 MR. BUTLER: This is a business judgment, Your Honor.  
24 I mean, with respect to -- there are three sets of plans here.  
25 There is the HRP, which is collectively bargained. There is

1 the SRP, which affects all salaried employees and which I  
2 understand Mr. Rosenberg to say they're not objecting to. And  
3 then there is the replacement plans for the SERP which we are,  
4 in our -- the company's business judgment we want to freeze now  
5 because if you freeze the SRP and don't freeze the SERP,  
6 because the SERP's a wraparound plan, the amounts of claims  
7 under that will simply grow fairly exponentially.

8 THE COURT: They just move.

9 MR. BUTLER: They just move; it doesn't freeze  
10 anything as it relates to those people. That's not what we're  
11 trying to do as the debtors. We're trying to freeze that now.

12 We think -- and this is a business judgment test,  
13 this is a 363 question. The company's board of directors, the  
14 company's compensation committee, Mr. Naylor's here as their  
15 representative, believes that it would be patently unreasonable  
16 to freeze all the plans of all the employees at Delphi and  
17 provide replacement plans for everybody but the 460 executives.

18 What the compensation committee decided to do was to  
19 make the follow-on plans, with respect to the executives, not  
20 pay anything until we emerge. So if we don't emerge and  
21 there's not an effective date then they won't get paid under  
22 those plans. But if there is an effective date they will. It  
23 is the judgment of the company that that is very important here  
24 as a matter of parity, a matter of fairness, a matter of trying  
25 to do the right thing here because we are taking benefits away

1 from people.

2           The reality here is that the SERP -- in the  
3 automotive industry the SERP benefit is one of the most  
4 significant benefits that people have, whether you and I might  
5 think that's the right thing or the wrong thing. The reality  
6 is in the compensation scheme in the automotive industry, SERP  
7 is a big, big issue. The concept of freezing the SERP -- and  
8 as Mr. Rosenberg would have you say -- by the way, we won't  
9 tell you now in uncertain times and uncertain future as to  
10 whether or not if we get done at the end of the day you'll have  
11 anything, even though we're providing for everybody else at the  
12 company. The debtors think it's patently unreasonable. And I  
13 would indicate, Your Honor, that I think 363 and the business  
14 judgment rule allows the debtors to make that judgment. It is  
15 a reasonable judgment. This plan is not -- while it was  
16 included in the original plan at that point in time, there's  
17 nothing in the Bankruptcy Code that requires these plans that  
18 Your Honor pointed out to be dealt with in a plan of  
19 reorganization.

20           This is a use of assets of the estate. We concede --  
21 some would argue that it's not outside of the ordinary course  
22 of business; I wasn't prepared to take that on. I think we  
23 need to come before the Court and we have. But it is the  
24 debtors' business judgment, and I think, frankly, uncontested  
25 on this record, other than Mr. Rosenberg's argument, there's no

1 testimony to the contrary here. The record's uncontroverted.  
2 They didn't even designate their own depositions and put those  
3 into the record -- of the party witnesses.

4 What Your Honor has are the declarations of  
5 Mr. Miller and Mr. Sheehan and Mr. Naylor as to the exercise of  
6 that business judgment.

7 MR. ROSENBERG: Your Honor, the record may indeed be  
8 uncontested, but it is woefully inadequate. For the first time  
9 in the responsive pleading, late last night, financial  
10 information respecting this proposed plan and its cost was  
11 provided. Obviously, between 8 o'clock last night and right  
12 now our consultant has not reviewed -- they've been asked to  
13 but they have not reviewed this material for reasonableness and  
14 reasonable exercise of business judgment even if that were the  
15 standard. All of that information could have been supplied  
16 many, many weeks ago. And I would point out that unlike the  
17 GSA motion, this one was noticed, brought on under the regular  
18 rules of engagement in this case. There was plenty of time,  
19 plenty of notice, and the first time any financial information  
20 was received was late last night.

21 MR. BUTLER: Your Honor, I think Mr. Rosenberg needs  
22 to consult with his team and see whether he wants to correct  
23 the record. If necessary, I will introduce into evidence  
24 e-mails to Mr. Rosenberg and his colleagues and I will put on  
25 testimony of the financial due diligence done with the

1 creditors' committee over the last ten days on this subject.  
2 For him to tell this Court today the first financial analysis  
3 they had on this motion was yesterday night is not accurate.  
4 And I'll be happy to put on the record, I'll be happy to get  
5 the e-mails, I'll be happy to introduce it and call it to  
6 question. But that's not the way we should be conducting these  
7 hearings.

8 MR. ROSENBERG: Your Honor, there was indeed a call  
9 at which some information was given; a large amount of  
10 additional information was requested. It was provided last  
11 night notwithstanding that it was asked for some time ago.

12 THE COURT: Well, let me -- before we get into this  
13 further, the -- I think the record is clear that there is a  
14 substantial cost, a monthly cost, to the debtors of not  
15 freezing the plans. And I would like to know what the -- a  
16 portion of that is, which is if you don't freeze the salary  
17 plan does -- what portion of that monthly cost kicks in, for  
18 example, if it is not frozen until October 3rd, when the Court  
19 has another hearing date, to enable the committee to look at  
20 the material that it claims it wants to look at.

21 MR. BUTLER: Your Honor, I'll get that information.  
22 I can't tell you off the top of my head. We have a summary  
23 here which I'll go through with you.

24 But, Your Honor, I have an e-mail where Mesirow  
25 Financial has confirmed with the company on September 20th that



1 they have all the financial information that they need to  
2 analyze this motion, all right? I don't want the Court to be  
3 misled here.

4 First Mr. Rosenberg got up and said they didn't have  
5 any information until last night. When I called the question  
6 he corrected himself and he said oh, no, there was a call in  
7 which we got information and then we didn't get a large amount  
8 of information until last night. There were two discrete  
9 questions, the e-mail that was sent on the 20th was one page  
10 long and that information was summarized in the pleading.

11 This is not a case -- and I will on this one, Your  
12 Honor, I will put on witnesses and I will impeach  
13 Mr. Rosenberg's statements; they are not accurate. So he could  
14 either correct them or we will go and put the e-mails on and  
15 call Mesirow, they're here, and ask his financial advisor  
16 whether or not they can --

17 THE COURT: Well, that's fair. We should probably  
18 hear from Mesirow.

19 (Pause)

20 THE COURT: No, you should come up because it's what  
21 gets picked up by the microphone.

22 (Pause)

23 MR. ROSENBERG: Your Honor, if I may, I'm sorry to  
24 give this to you piecemeal. The information that was received  
25 last night was the information that our pension consultants

1 both requested, not the Mesirow information.

2 THE COURT: Well, Mr. Rosenberg, what is it that you  
3 believe you need to close the loop here?

4 MR. ROSENBERG: Well, we got the information last  
5 night, right?

6 THE COURT: No, but what is it?

7 MR. ROSENBERG: A Buck analysis, Your Honor, of the  
8 information received last night.

9 THE COURT: You have to be a little more specific  
10 then that for me. What is it that is going to close the gap  
11 for them?

12 MR. ROSENBERG: It is the information that was  
13 contained in their reply papers that was filed last night.  
14 That information needs to be analyzed.

15 MR. BUTLER: Your Honor --

16 THE COURT: You mean the cost of this program?

17 MR. RIELA: Your Honor, there is a cost of the  
18 salary -- the information that was provided to us during the  
19 course of the due diligence was a single number relating to the  
20 cost of the follow-on salary and the executive -- the SPR, PDR,  
21 SRPS. It was all bunched together. But it asked for a  
22 breakout of that information. The information that we hadn't  
23 gotten up until yesterday.

24 THE COURT: Breaking out the salary from the  
25 executive?

1 MR. RIELA: The relative cost of the plan as broken  
2 out.

3 THE COURT: And your focus is really only on the  
4 executive one?

5 MR. RIELA: That is correct, Your Honor.

6 MR. BUTLER: And, Your Honor, I'd like to examine  
7 Mesirow because that's just not a truthful statement. The  
8 information was circulated on September 20th. I have an e-mail  
9 from Mesirow confirming it. I'm happy to go through it. There  
10 was nothing provided to Buck last night, that I'm aware of,  
11 because our process is always to exchange financial  
12 information. The creditors' committee asks, no matter which  
13 advisor it is, through Mesirow. So there's a conduit. So we  
14 know that the creditors' committee has the information.  
15 Mesirow is the gatekeeper of information, they always have  
16 been. We've gone back and forth and I have the e-mail right  
17 here.

18 MR. ROSENBERG: Your Honor, the person --

19 MR. BUTLER: I can't print it out, not in my  
20 BlackBerry.

21 MR. ROSENBERG: A secret plan to get out of Vietnam,  
22 Judge.

23 THE COURT: No, no, he has his BlackBerry. He  
24 can't --

25 MR. ROSENBERG: Your Honor, the personnel who was

1 involved in this from Mesirow is not, in fact, in the  
2 courtroom. It's hardly fair to put someone different up.

3 THE COURT: Let me just ask your colleague, was the  
4 information that was previously provided, did it have a  
5 breakout of the two different follow-on plans' costs separately  
6 broken out?

7 MR. RIELA: The information that was first provided  
8 was a single number. The information that was provided in the  
9 reply did break out the --

10 THE COURT: And you haven't had anything other than a  
11 single number until yesterday?

12 MR. RIELA: That is my understanding.

13 MR. BUTLER: That is not accurate, Your Honor. I can  
14 prove it.

15 MR. ROSENBERG: Well, Your Honor --

16 MR. BUTLER: I mean, they're responsible for their  
17 financial advisors. And if we need to get Mr. Pickering to  
18 show up --

19 MR. ROSENBERG: Well, Your Honor, Mr. Pickering was  
20 not subpoenaed and they had this argument --

21 THE COURT: I know, but --

22 MR. ROSENBERG: If we could over the lunch break, or  
23 whatever, we can resolve whether Mr. Butler is correct.

24 THE COURT: Well, I guess you ought to show me  
25 whether you provided this information.

1 MR. BUTLER: Sure, Your Honor.

2 THE COURT: And, actually, I'd like to see it. I'd  
3 like to know what the --

4 MR. BUTLER: It was the same information that was in  
5 here. There was a simple information request.

6 (Pause)

7 THE COURT: The large amount of information that  
8 Mr. Rosenberg said was needed was this information on one page,  
9 Your Honor. And it was provided on September 20th and  
10 Mr. Pickering sent a notice back to our financial advisors,  
11 FTI, acknowledging they received it and thanking us for it.  
12 And I'm happy to mark this, Your Honor, if you'd like, as  
13 Exhibit 61 and provide it to the Court. And you'll find it has  
14 the same information in it that we summarized in our brief.

15 THE COURT: Okay. Why don't I see that?

16 MR. ROSENBERG: I have never seen it, Jack. How  
17 about showing it to the guys who got it?

18 (Pause)

19 MR. BUTLER: And I think, Your Honor, we indicate in  
20 paragraph 12 of our reply --

21 THE COURT: Right. No, I have that.

22 MR. BUTLER: -- that there was a delay in following  
23 up to an isolated request and that we resolved that on the  
24 20th, three days before the hearing.

25 (Pause)

1 THE COURT: Okay. Well, the e-mail does, almost word  
2 for word, follow or track paragraph 12 of the response, both  
3 with regard to the portion of the eighty-seven million of the  
4 defined contribution plan proposal, that it would be  
5 attributable to the DC as rep and the projected annual costs  
6 attributable for active vet SERP participants.

7 MR. BUTLER: And, Your Honor, just if I may so, the  
8 record's clear here with respect to this motion. On September  
9 3rd, Mr. Rosenberg and I reached an agreement about this motion  
10 being filed on September 12th as next vetted motion with the  
11 procedural consent, not substantive consent, of the creditors'  
12 committee on the understanding that I would provide him, on  
13 September 3rd, with a draft of the motion and the follow-on  
14 plans so that they could begin to look at them, which I did.  
15 Mr. Rosenberg acknowledges that.

16 There was, subsequent to September 3rd, a financial  
17 due diligence call that included business people at Delphi with  
18 representatives of the committee at which this entire motion  
19 was vetted. There was then an isolated follow-up request, it  
20 was an e-mail sent from one of the financial advisors of the  
21 creditors' committee sent to a business person at Delphi, which  
22 we didn't get, didn't follow up, didn't understand it to be  
23 there.

24 When they filed their objection on Friday which said  
25 we didn't give them some information, we immediately followed

1 up to find out what it was. We found out that there was this  
2 isolated piece of information which Your Honor has. We  
3 provided that immediately to them and we got FTI's -- excuse  
4 me, Mesirov's information that they had received that  
5 information on Saturday afternoon, the 20th. That's the record  
6 of how that information was provided. And all it was was the  
7 confirmation of these breakdown numbers, that's all. The rest  
8 of the diligence in this motion had been completed by the  
9 creditors' committee prior to that time.

10 MR. ROSENBERG: Your Honor, needless to say, I will  
11 look at this and if Mr. Butler is correct, that this was a  
12 delay between professionals on our side of the fence, I will  
13 apologize profusely to the Court and act accordingly. This is  
14 news to me.

15 THE COURT: Okay. Well, there are really two  
16 different bases for the objection. One is the contention that  
17 there's not sufficient information with regard to the cost of  
18 the aspect of the motion that the committee is objecting to.  
19 The other is that, simply, this aspect of the motion shouldn't  
20 be approved now. And, frankly, it seems to me that that  
21 objection would be made whether or not there was sufficient  
22 information.

23 The cost, as set forth here in the pleading and in  
24 the information, I don't have any basis to refute it and no one  
25 has sought to refute it. So I'm going to focus on the other

1 aspect of the objection, which is that it's premature to do  
2 this. On that score it is clear that, particularly when you  
3 get up to senior level people, quite often their compensation  
4 arrangements, particularly those aspects of the compensation  
5 that are contingent, are left for the plan stage and sometimes  
6 even left for the new board to deal with.

7 My question here, Mr. Rosenberg, is how does this  
8 really fit into that category? This strikes me as not the type  
9 of arrangement that you'd enter into with a CEO or chief  
10 financial officer or division head regarding his or her  
11 compensation package, generally. This is a retirement program  
12 that seems to be, I guess, I mean, from what I can tell there's  
13 no objection on this basis to the contrary that is consistent  
14 with, in fact, less than what was previously in place. I have  
15 Mr. Naylor's declaration and Mr. Sheehan's declaration that  
16 this is, as best as they can tell, customary in the industry.  
17 And if the debtor were to reorganize -- it would seem to me  
18 that this is not the type of aspect of an executive's  
19 compensation package that a committee or a new board would want  
20 to negotiate. Am I wrong about that?

21 MR. ROSENBERG: Well, Your Honor, I fully appreciate  
22 and understand what you're saying and wouldn't disagree with  
23 it. I guess the real response is simply of all the times to  
24 lock in a new program, given what's going on in the auto  
25 industry and the capital markets, with no knowledge of what



1 reality is going to look like tomorrow, let alone in a year,  
2 the timing is just not appropriate from the point of view of  
3 the estate.

4 THE COURT: But is it really a new program? I mean,  
5 it's only new in a sense that the old one is being terminated  
6 to save the debtor money.

7 MR. ROSENBERG: That's true. That's true but, you  
8 know, it may well be that the appropriate replacement is a lot  
9 less than this. I'm not saying it is but I am saying that  
10 we're making a judgment at a time of incredible flux and  
11 uncertainty. And I would think that the more appropriate time  
12 to make it is in the context of a plan, a TEV, some recognition  
13 of where the industry and where the company is going.

14 THE COURT: Okay. All right. Well, I'm going to  
15 grant this motion. I believe that the objection would be a  
16 valid objection to certain types of executive compensation but  
17 is not, given the nature of this replacement plan in the record  
18 as to its cost and the fact that it is a replacement plan for  
19 one that's being terminated for a substantial cash savings to  
20 the debtor, one that would lead me to deny this aspect of the  
21 motion.

22 The record before me shows that this replacement plan  
23 is consistent with the industry. Certainly no replacement  
24 plan, to my mind, would be inconsistent with the industry since  
25 the industry does have these types of plans. And, finally, I

1 believe the debtors have appropriately taken into account the  
2 effectiveness of this program being tied to emergence from  
3 Chapter 11. As a legal matter I don't believe, as I said  
4 before, that that somehow disables the relief sought as a sub  
5 rosa plan. They could have, as they have with the other  
6 replacement plans, had it kick in tomorrow. The deferral is to  
7 the benefit of the debtors. I don't believe that determines a  
8 plan, but it does protect the debtors against a situation  
9 where, for example, certain debtors, albeit a hypothetical  
10 situation, might not emerge in a Chapter 11 plan. And that's a  
11 legitimate protection that the debtors have foreseen.

12 So I conclude, as a business matter, that providing  
13 some form of replacement plan for the executives in the amended  
14 SERP and amended SRESP, to the extent objected to by the  
15 committee, is a valid exercise of business judgment and a  
16 more -- more in the nature of the traditional aspects of  
17 compensation in this industry that should not await either  
18 further developments in the industry or further development of  
19 a Chapter 11 plan.

20 MR. BUTLER: Thank you, Your Honor.

21 (Pause)

22 MR. BUTLER: Your Honor, by agreement, the next  
23 matter we're taking up is matter number 4 on the docket. On  
24 the agenda it is the GSA and MRA amendment motion, docket  
25 number 14164.

1 (Pause)

2 MR. BUTLER: Your Honor, in this case there have  
3 been -- with respect to this matter there have been eight  
4 objections filed by six parties and that would be not including  
5 a series of objections -- excuse me -- eight objections filed  
6 by six parties. And then there have been five parties -- I  
7 should say four parties that have filed five statements of  
8 support or no objections to the document.

9 The principle -- and of the parties that have  
10 objected, one of those parties, the United States of America,  
11 at docket number 14202, has been settled by the placement of  
12 appropriate language in the revised order.

13 THE COURT: Is that similar to or the same as the  
14 language that was in the confirmation order?

15 MR. BUTLER: Yes, Your Honor. It is.

16 THE COURT: Okay.

17 MR. BUTLER: And that had always been intended. And  
18 it was under discussion with --

19 THE COURT: And the United States is withdrawing its  
20 objection on that basis?

21 MR. CUDARO: Yes, Your Honor. Joseph Cordero (ph.)  
22 for the U.S. -- for the U.S. -- United States Attorney's  
23 office. On that basis the United States withdraws the  
24 objection.

25 THE COURT: Okay. Thank you.

1 MR. BUTLER: Your Honor, as I understand it the IUE-  
2 CWA and the steel workers have filed objections relating to the  
3 implementation agreement negotiations as a placeholder. In  
4 addition, I believe -- I think that's the same as the prior  
5 motion. In addition, the IUE has a separate basis for  
6 objection on this motion which they're going to present.

7 MR. BROUDE: That's correct.

8 THE COURT: Okay.

9 MR. BUTLER: That leaves us with, I think -- and the  
10 creditors' committee filed two objections. Their preliminary  
11 at 14168 and their final at 14215. That leaves, I think, the  
12 principal litigants here, other than the isolated issue that  
13 Mr. Kennedy will discuss, the creditors' committee -- a member  
14 of the creditors' committee, Wilmington Trust, the indentured  
15 trustee, and two of the noteholders under those indentures, CR  
16 Intrinsic Investors LLC and Highland Capital Management LP.

17 Conversely, Your Honor, statements of support or no  
18 objection have been filed by Fiduciary Counselors Inc. at  
19 docket number 14210, the PBGC at docket number 14212, the  
20 Official Committee of Equity Security Holders at docket number  
21 14222 and three of the debtors North American unions: the  
22 IUOE, the IBEW and the IAM at dockets number 14222 and 14225.  
23 And they're, I think, very much in the position that those  
24 three unions, as the steel workers and the IUE is, except for  
25 its isolated issue, in that they are involved in collectively

1 bargaining implementation agreements. And they have reported  
2 on their view of the status of that to the Court in the  
3 statements that they filed.

4 In terms of the record for this motion, Your Honor,  
5 we again have worked with the parties and we have a joint  
6 exhibit index which is Exhibits 1 through 143. I'll add 144 in  
7 just a moment. And those exhibits are as follows: The  
8 debtor's declarations are Exhibits 1 through 5. The creditors'  
9 committee's declarations is Exhibit 6. There are board  
10 presentations that are Exhibits 7 through 13, statutory  
11 committee presentation Exhibit 14 through 21. There are  
12 excerpts from those on specific business plan module, a plan of  
13 reorganization, GSA modules, pension plan investor matters,  
14 strategic alternatives, transformation plan updates and other  
15 matters which begin at Exhibit 22 and go all the way through  
16 Exhibit 50.

17 There are some documents regarding negotiations  
18 between the debtors and General Motors which are at Exhibits 51  
19 through 53. The PBGC's documents are 54 through 57. There are  
20 various communications between the statutory committees and the  
21 company, Exhibit 58 through 60. Some plan related documents,  
22 61 and 62, the plan and the confirmation order. And then  
23 there's documents relating to this matter that begin at  
24 Exhibit 63. These are court documents running all the way to  
25 82.

1 I would, Your Honor, note that document -- item 77  
2 through 80 we'll reserve. We have used one of those numbers,  
3 and I think Your Honor's book has been updated for this  
4 purpose, which is Exhibit 77, is the IUE supplemental  
5 objection. That was filed under seal, marked highly  
6 confidential simply because it refers to some nonpublic  
7 information. But that's at docket number 14220 and that's now  
8 Exhibit 77.

9 Exhibit 83 and 84 are other supporting documents; 84  
10 is reserved, not being used today. The demonstratives that  
11 we'll be using during the course of the hearing and that have  
12 been testified to by the party witnesses for Delphi are in a  
13 group at Exhibit 85.

14 I'd like, now, to talk about the depositions. This  
15 is Exhibits 86 through 94. First, with respect to certain of  
16 the either parties or nonparties other than the debtor's  
17 declarants, this would be Exhibits 92 through 94,  
18 Mr. Celentano's deposition, Mr. Henderson's deposition and  
19 Mr. Daigle's deposition; those are all coming in.

20 With respect to the debtor's declarants, Exhibits 86  
21 through 91, the creditors' committee intends to file -- we have  
22 agreed on an agreement. We've agreed that those will come in  
23 for convenience but subject to a stipulation I'm going to read  
24 because the creditor's committee is going to file a composite  
25 exhibit, 144, which will be their designations of those

1 depositions because they don't want the whole deposition to  
2 come in. Officially they want to designate the parts of the  
3 depositions to come in for you. And so --

4 THE COURT: Is that in the binder?

5 MR. BUTLER: Excuse me?

6 THE COURT: Is the composite in the binder?

7 MR. BUTLER: That composite exhibit, I think, is  
8 going to be in by lunchtime, I hope.

9 MR. CONNELLY: Yes, Blair Connelly, Your Honor. We  
10 will prepare it and insert it in the binder.

11 THE COURT: Okay.

12 MR. BUTLER: And the agreement I've been asked to  
13 read in the record says that the debtors and the creditors'  
14 committee have reached an agreement regarding admissibility of  
15 deposition transcripts. I'm speaking now of the declarant  
16 transcripts, 86 through 91. The transcripts are admitted into  
17 the record in their entirety, for convenience, with the  
18 understanding the Court will only consider as admissible  
19 evidence those portions of the transcripts that have been  
20 designated by the creditors' committee or the Court finds  
21 related to the creditors' committee deposition designations  
22 under Federal Rule of Evidence 106.

23 The creditors' committee reserves all rights and  
24 objections as to whether any particular excerpt is admissible  
25 under Rule 106. And that's the basis of that agreement.

1 In addition, Your Honor, we have asked the creditors'  
2 committee, and I presume they'll inform us before the record  
3 closes today, as to whether they would permit Mr. O'Neal's  
4 deposition to come in in its entirety, without designations.  
5 Mr. O'Neal is our chief executive officer. He was not a  
6 witness here. They had requested he be deposed. We agreed to  
7 produce him for that purpose. And we've asked them to consider  
8 allowing the Court to read the entire deposition, and they're  
9 going to take that under consideration and advise us. If  
10 they're unwilling to do so then the same agreement, with the  
11 same rules I've just described, would be applicable.

12 MR. BROUDE: Yes, Your Honor. The purpose of the  
13 agreement that Mr. Butler has described was to relieve the  
14 debtors, and really their lawyers, from the burden of having to  
15 do counterdesignations under this expedited proceeding. We had  
16 a bit of a miscommunication, I think, regarding Mr. O'Neal, but  
17 we are considering that discussing it with them.

18 THE COURT: Okay. All right.

19 MR. BROUDE: And if I may add one point, Your Honor,  
20 and I apologize to Mr. Butler who did vet this issue with me  
21 beforehand, but I've received an e-mail since we spoke that I  
22 want to address.

23 I understand there was a bit of a snarl-up with the  
24 exhibit list and that there were some exhibits that came off of  
25 the iteration that we thought was going in that we would like



1 back in. I candidly don't know if the exhibit list, as before  
2 Your Honor, has those or not. I just found out about it. I  
3 don't believe there is any objection to those exhibits. They  
4 were actually originally put on by the debtors and we had no  
5 objection to them. They subsequently took them off, but we  
6 wanted them to stay on. That's the only comment I would say on  
7 the exhibit list.

8 THE COURT: Okay.

9 MR. BUTLER: I'm not quite done yet. I only got  
10 through the depositions; I've got two more to go.

11 MR. KENNEDY: We did have some markings on the  
12 deposition.

13 MR. BUTLER: I'm sorry, Mr. Kennedy, you have other  
14 designations you wanted to submit as well?

15 MR. KENNEDY: We had earlier submitted them when it  
16 turned out that the entire deposition --

17 THE COURT: You'd better come to the microphone  
18 because it's not being picked up.

19 MR. KENNEDY: We had earlier communicated with your  
20 office some deposition designations that we did not insist upon  
21 when it appeared that the entire depositions were in the  
22 office. We'll simply include, what we're suggesting, is part  
23 of what the committee designates.

24 THE COURT: Okay.

25 MR. KENNEDY: For purposes of convenience.

1 THE COURT: All right. That's fine, Mr. Kennedy.

2 MR. BUTLER: So Exhibit 144, then, will be the  
3 composite UCC/IUE designations.

4 THE COURT: Just highlight yours in a different  
5 color.

6 MR. BUTLER: With respect to Exhibits 95 to 124 are  
7 materials designated by the creditors' committee which we have  
8 no objection. Items 125 through 128 are materials designated  
9 by the IUE-CWA to which we have no objection. Exhibit 129 was  
10 the complaint that's been filed under seal in these cases and  
11 was designated by the senior noteholders; we have no objections  
12 to that.

13 There were then additional materials designated by  
14 the creditors' committee over the weekend and last evening  
15 which are listed at items 130 through 143 and we have no  
16 objections to that. Certainly, and we can sort this out in the  
17 lunch break, if there are any additional exhibits the committee  
18 wants in we'll take a look at them and read those designations  
19 after lunch. There was something that was taken off that was  
20 ours, we didn't want to proceed with, they want it in and I  
21 don't have a problem with that. So we'll sort out those.

22 So, Your Honor, I think with that understanding on  
23 the depositions, I don't think there's a dispute about the  
24 exhibits and I would move, therefore, the admissions of  
25 Exhibits 1 through 144, subject to the stipulation I've read

1 into the record.

2 THE COURT: All right. Well, it's clear to me that  
3 there's agreement as to the admissibility of the exhibits. We  
4 don't actually have, necessarily, all the exhibits yet so the  
5 agreement's reflected on the record. The exhibit books that  
6 will contain the exhibits, I guess, are going to be submitted  
7 to me around lunchtime?

8 MR. BUTLER: Well, you have them already, Your Honor.

9 THE COURT: No, I thought you said that there are  
10 some other ones that might come in.

11 MR. BROUDE: Once we confirm, I mean, for all I  
12 know --

13 MR. BUTLER: I think they have to confirm it.

14 THE COURT: All right. The ones that are presently  
15 in the book are --

16 MR. BUTLER: 1 through 143 --

17 THE COURT: -- admitted. And subject to your  
18 actually providing me with any of the additional ones you  
19 referred to, those will be admitted also.\*\*

20 (Joint Exhibits 1-143, were hereby admitted into evidence, as  
21 of this date.)

22 MR. BUTLER: Thank you, Your Honor.

23 MR. FOX: Your Honor, if I might? Before the hearing  
24 started I --

25 MR. BUTLER: I have more. I want to go to yours

1 next.

2 MR. FOX: I've got the hearsay point.

3 MR. BUTLER: I'm sorry. Okay. Do you also want me  
4 to put yours in?

5 MR. FOX: Before you do that, yes.

6 MR. BUTLER: Okay.

7 MR. FOX: The point Mr. Hogan and I discussed,  
8 throughout the hearings we've agreed that to the extent the  
9 exhibits come in, if they're out of court declarations and not  
10 admitted for the truth of the matters asserted -- and we have  
11 agreed that that would continue with these exhibits as well.

12 MR. BUTLER: Not the declarations.

13 MR. FOX: No, no, not the declarations. All of the  
14 other -- you know, you've got the board brought some committee  
15 presentations and all sorts of documents that --

16 THE COURT: Unsworn declarations --

17 MR. FOX: Yes.

18 THE COURT: -- would be subject to hearsay objection.

19 MR. FOX: Correct. Thank you.

20 THE COURT: Is that a fair summary, Mr. Fox?

21 MR. FOX: That's correct.

22 THE COURT: Okay.

23 MR. BUTLER: Your Honor, we also had --

24 THE COURT: Before we go further, I thought people  
25 had informed the ECRO operator who they were but I think

1 it's -- particularly given the fact that people are in another  
2 courtroom listening to this. When you stand up, if you could  
3 just identify yourself for the record the first time you speak  
4 and then we can go on from that.

5 MR. BUTLER: In addition to those 144 exhibits that  
6 have come in, Your Honor, Wilmington Trust provided, either  
7 last night or this morning, a separate exhibit book. They were  
8 not part of the meet and confer process because they didn't  
9 file an objection until yesterday at noon. And they have  
10 designated twenty-four exhibits separately. I think many of  
11 these exhibits have already come in in another way. But for  
12 the purposes of just, I think, efficiency, we would agree to  
13 mark these as, instead of joint Exhibit 1 through 144,  
14 Wilmington Exhibits 1 through 24. I believe Mr. Fox has given  
15 the Court one of these exhibit books. If not, I can provide  
16 it.

17 THE COURT: I don't have one up here.

18 MR. BUTLER: I'll pass mine up right now and get  
19 another one from Mr. Fox, Your Honor.

20 THE COURT: Okay.

21 MR. BUTLER: The debtors have no objection to the  
22 admission of these either.

23 THE COURT: All right. That's fine. So those will  
24 be admitted also, in that way.

25 (Wilmington Trust Exhibits 1-24 were hereby admitted into

1 evidence, as of this date.)

2 (Pause)

3 MR. BUTLER: Your Honor, I think that now takes us to  
4 the cross examination, if there's going to be any, with respect  
5 to the declarants. And we would start with the debtor's case,  
6 and the first witness we would proffer is John D. Sheehan.  
7 Mr. Sheehan, our chief restructuring officer whose declaration  
8 is set forth at Exhibit 1 of this record.

9 THE COURT: Well, that is my normal practice with an  
10 evidentiary matter. But I think there's a threshold issue here  
11 that I'd like the parties to address, the lawyers to address,  
12 which is the issue as to whether this agreement constitutes a  
13 modification of the plan, under Section 1127, in light of the  
14 plan, the confirmation order and the terms of the amendment. I  
15 don't know if that threw you all off. I can take a break for  
16 five or ten minutes if you want to focus on that.

17 MR. ROSENBERG: Yes, please, Your Honor.

18 THE COURT: Okay. So I'll come back at quarter of.

19 MR. BUTLER: Thank you, Judge.

20 THE COURT: I'm also prepared to discuss that issue  
21 with people in chambers also; I'll leave that up to you.

22 (Recess from 11:35 a.m. till 12:15 p.m.)

23 THE COURT: Please be seated. We're back on the  
24 record in Delphi Corporation, having had a chambers conference  
25 with the debtors, the objectors, GM and other parties-in-

1 interest, including the equity committee. And in light of that  
2 conference, it appeared to me and to the parties that the  
3 hearings that remain that were scheduled for today should be  
4 adjourned to Thursday morning. And I will adjourn them to 9  
5 o'clock on Thursday morning.

6 I'm very mindful of the time pressures that the  
7 debtors and all of their constituents are under. Not only the  
8 time pressure facing the debtor as of the end of this month but  
9 also the debtors' very strong desire and the creditors' very  
10 strong desire for the debtors to emerge by the end of this  
11 year.

12 It's my view that adjourning this hearing until  
13 Thursday morning will not jeopardize those time frames. And,  
14 in fact, given the issues that the parties have ably briefed  
15 and teed up for trial, that the time can be better spent given  
16 their -- at this point, the parties' level of knowledge in  
17 meeting today and tomorrow, which is the purpose of the  
18 adjournment.

19 So I will adjourn the remaining matters, again, until  
20 9 a.m. on Thursday. And I'm prepared to hear them Thursday and  
21 Friday. And I will rule from the bench if the matters are not  
22 resolved at the close of the hearing on either Thursday or  
23 Friday. Any questions?

24 MR. BUTLER: Thank you, Your Honor.

25 THE COURT: Okay. I do have a trial for tomorrow but

1 I imagine you could store -- I know you can store your  
2 materials, if you wish, in the conference room that I share  
3 with Judge Peck, who's out until later this week. So if that's  
4 more convenient to you then hauling them back to your offices,  
5 you can do that.

6 MR. BUTLER: Thanks, Judge.

7 MR. ROSENBERG: Thank you, Your Honor.

8 (Proceedings Concluded at 12:15 PM)

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C E R T I F I C A T I O N

I, Pnina Eilberg, certify that the foregoing transcript is a  
true and accurate record of the proceedings.

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Pnina Eilberg

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Date: September 25, 2008